Filed 1/29/02

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re ALEXANDER P., a Person Coming Under the Juvenile Court Law.	
ORANGE COUNTY SOCIAL SERVICES AGENCY, Plaintiff and Respondent, v. ALMA P., Defendant and Appellant.	G029115 (Super. Ct. No. DP000859) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Gary Vincent, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Rich Pfeiffer, under appointment by the Court of Appeal, for Defendant and Appellant.

Laurence M. Watson, County Counsel, and Julie J. Agin, Deputy County Counsel, for Plaintiff and Respondent.

Stephen S. Buckley, under appointment by the Court of Appeal, for the Minor.

Alma P. appeals from the judgment of the juvenile court terminating her parental rights to her son, Alexander. She claims the juvenile court erroneously denied her petition under Welfare and Institutions Code section 388[1] seeking return of Alexander to her custody. She also claims the juvenile court should have applied the so-called "benefit exception" (§ 366.26, subd. (c)(1)(A)) to circumvent termination of parental rights. We affirm.

FACTS

Three-year-old Alexander (known as "Alex") was taken into protective custody in May 1999 by the Orange County Social Services Agency due to his mother's alcoholism, mental problems and bizarre behavior, and her resulting inability to care for him.[2] After eighteen months, the juvenile court terminated reunification services and set a hearing under section 366.26. It found the mother had not complied with her service plan because she steadfastly refused to acknowledge her long-standing alcohol problem and to participate in effective treatment. Expert opinion supported the juvenile court's finding that returning Alex to her would pose a risk of detriment to him. "Ms. [P.] suffers from a combination of psychiatric disorders . . . and chronic alcoholism that have acted in concert to seriously affect her ability to function as a responsible adult and as a parent. The entrenched nature of these conditions along with her serious lack of insight, i.e., continued denial, lack of accountability, and blaming others, makes it highly unlikely that this pattern can be reversed over the next few months to an extent that she can safely parent her son full time."

The mother sought relief from the juvenile court's orders by way of a writ petition under California Rules of Court, rule 39.1B; we denied relief. (*Alma P. v.*

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1 All statutory references are to the Welfare and Institutions Code unless otherwise noted.

2 During the first two years of Alex's life, the mother was in "ongoing contact" with Child Protective Services in Arizona. Alex was removed from her custody for six months when he was barely two years old. (*Alma P. v. Superior Court* (April 17, 2001, G028401) [nonpub. opn.].)

Superior Court, *supra*, G028401.) The mother then filed a petition under section 388, asking that Alex be returned to her care under a plan of family maintenance.

In support of her petition, she declared she had been attending weekly individual drug abuse treatment sessions for the previous three months; her twice weekly urine drug screens had been negative; she had attended monthly psychiatric appointments; she regularly attended 12 step meetings three to four times per week; she had completed 16 weeks of parenting classes through the YMCA; and she was "motivated to live a life free of alcohol and drugs." She was employed and lived with Alex's maternal grandmother, who stood ready to provide financial help and childcare. The mother claimed Alex enjoyed their visits and "always asks for more time . . . ."

The hearing on the section 388 petition was set concurrently with the hearing under section 366.26. SSA recommended denying the petition and terminating parental rights. The social worker reported the mother's interactions with Alex during their monitored weekly visits had not improved over almost two years. "During each visit, despite being given redirection by several different monitors, the child's mother consistently brings the child excessive food, toys, videotapes, [or] video games . . . . She does not set boundaries. She constantly tells the child that she loves and misses him and appears to need the reassurance from the child by questioning him as to whether he loves and misses her too." The mother did not perceive mental illness as being a problem for her, even though three evaluators under Evidence Code section 730 had concluded otherwise, which resulted in her failure to take the recommended medication.

The social worker met with the mother's AA sponsor, who stated that the mother "has the desire not to drink" and that she was "trying hard" to apply the steps. The mother wanted to "move along quickly," but the sponsor advised her that "it takes one to two years to go through the steps." The mother told the social worker she considered herself a "recovered" alcoholic rather than a "recovering" alcoholic, because "recovering" gives the impression she may drink again, which she insisted she will not do. She was

having no problem abstaining from alcohol. The social worker's assessment was that the mother "appears to be attending Alcoholics Anonymous meetings with little internalization of herself as an alcoholic."

At the hearing on May 9, 2001, the court heard testimony from Dr. Kent Powell, a psychiatrist who was seeing the mother through the Orange County Health Care Agency. He had seen her three times since February 1 for the purpose of evaluating her for mental illness. He testified that the mother "doesn't think that she has a mental illness, and that as long as she doesn't drink, she doesn't feel that she has a problem." Based mostly on his observations of her and, to a lesser degree, the history she provided, he opined, "[S]he has a history of alcohol abuse, and I think one of the diagnoses or opinions would be that she is an alcohol abuser, which appears to be in remission at this point. [¶] The other thing is that there's – and I think this is unclear – but there is a suggestion of hypomanic behavior, not severe."[3] He did not think medication was necessary. He also did not think she posed "a risk of danger or harm to her child."

Karin Sakahara, the mother's individual counselor through the Aliso Viejo Alcohol and Drug Abuse Services Clinic, had been seeing the mother since early January 2001. The mother reported no use of alcohol for over one year and denied the existence of any circumstances that might trigger her desire to drink. She did not refer to herself as an alcoholic or a recovering alcoholic, but she admitted "that alcohol use is a risk to her son." She was guarded and defensive, however, whenever the counselor attempted to discuss "the past reasons for Alexander being removed from her care."

Alex had been living with his foster parents and their seven-year-old son for two years. He was thriving in their care, and they were committed to adopting him. Alex testified he loved his mother and wanted to visit her more; he was sad when the visits ended.

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[3] Dr. Powell defined "hypomanic behavior" as "reduced evidence of mania, in which they may be – their behavior may be elevated or kind of speeded up, maybe irritable, maybe high elation, often talk rapidly, have many ideas, often called 'flight of ideas' going through their mind."

He also loved his foster parents and their son, Jason; he was sad when he left them to go for visits with the mother. If given the choice, he would rather live with his foster parents. He wanted to live with them "forever."

The mother testified she believed she had "a lot of problems because of alcohol," and she did not intend to drink alcohol again. She was "grateful that I was sent to Alcoholics Anonymous. I wasn't aware that that was something that would be so helpful." She had been going to AA between 3 and 6 times per week "since this last time I was in court, since the last time when I was told the judge was wanting me to have done that already." She admitted she had been drinking when Alex was detained, but did not admit she had been drunk.[4]

The mother believed she was a good mother when Alex lived with her. "The mother that I used to be, he was safe and I took care of him. . . . I do believe that he was safe with me because he was my number one priority in everything I did." At first, she did not understand why the court took Alex away from her. "You see, at the beginning I might have thought it was for alcohol, but then they told me they wanted me to see a psychiatrist, that they wanted me to do all these other things." She believed Alex was not returned to her in December 2000 (at the 18-month hearing where services were terminated) because the social worker "didn't believe I had learned about the drinking issue" because she had not attended AA. Since that hearing she started going to AA because "I was told that the judge was very disappointed that I hadn't gone to AA, that he didn't believe that I would go to AA;

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[4] Q: [by Mr. Stitts]: Do you feel that you were intoxicated or drunk, or were you drunk?"

A: [by the mother]: "Now that I'm in the AA program and I don't drink anymore, I do believe I shouldn't have been drinking at all and that I did – that I would consider somebody else who would drink that much now to be having too much to drink."

Q: "So you think you were drunk that day?"

A: "I don't think that I was drunk. I don't know how – I wouldn't say I was drunk. In other words, did I know what happened? Yes, I did know what happened. Did I drink alcohol and should I have not drank alcohol? Yes, I agree with you. [¶] Back then I did not think I was drunk. Back then, since I used to have a different idea of drinking, I did not think I was drunk. But now I would consider that, like I just said before, to be wrong. I would consider one glass of wine wrong now."

and I wanted to show him that I would go to AA . . . ." She felt her drinking hurt Alex because "I could have never gotten us into all of this trouble if there wasn't alcohol present, if there wasn't an alcohol issue."

The juvenile court denied the section 388 petition, finding there were no changed circumstances and no showing that returning Alex to his mother would be in his best interests. "In making my own independent assessment of the credibility of the mother each time she has presented, I don't see any distinction here in mother's performance today from in the past, with the sole exception that she has made a concerted effort . . . on the issue of alcohol being a problem in the past. [¶] But, you know, she won't ever say she was drunk. . . . [¶] Mother absolutely has never made a categorical acceptance of responsibility for her conduct as the reason why two times courts have stepped in and removed her child and why this court has never been able to return this child to her, and this child has spent two-and-one-half years of his life away from her. [¶] . . . [¶][S]he doesn't understand why she really needs AA or why she is going to AA or why it's fundamentally so important to maintain her sobriety . . . . [¶] . . . [¶] I don't have any thought that [abstention from alcohol] will last. If we were to remove ourselves from this case and the child were to go home, that would probably last about three days, because there has been no fundamental insight gained by the mother."

The court found that Alex was adoptable and there was no showing that termination of parental rights would be detrimental to him. Accordingly, parental rights were terminated.

DISCUSSION

Section 388 provides that a parent "may, upon grounds of change of circumstance or new evidence, petition the court . . . for a hearing to change, modify, or set aside any order of court previously made . . . . [¶] . . . [¶] If it appears that the best interests of the child may be promoted by the proposed change of order . . . , the court shall order that a hearing be held . . . ." (§ 388, subds. (a) & (c).) This statute provides an escape

mechanism for a parent who can demonstrate a legitimate change in circumstances after services have been terminated and the focus of the proceedings has shifted from reunification to permanency and stability for the child. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309; *In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1316.) When evaluating a section 388 petition, we consider three factors: "(1) [T]he seriousness of the problem which led to the dependency, and the reason for any continuation of that problem; (2) the strength of relative bonds between the dependent children to both parent and caretakers; and (3) the degree to which the problem may be easily removed." (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 532, emphasis omitted.)

The mother contends there has been a legitimate change of circumstances since the termination of services because she has been attending AA and has continued her sobriety. She claims the original reason for Alex's dependency, her alcoholism, was not a serious problem to begin with and has now been eliminated. The juvenile court, which is entrusted with credibility determinations, clearly thought otherwise. We will uphold its determination if supported by substantial evidence.

The record reveals that the mother has a long history of serious problems with mental illness and alcohol abuse. This conclusion was affirmed by this court in the previous writ opinion and is substantiated by family members, police and other agency records, and mental health professionals. True, not every counselor who has treated the mother has diagnosed her with mental illness; but the juvenile court found those who did more credible than those who did not. Dr. Powell did not think the mother had any significant mental illness and opined that Alex would not be at risk with her. But Dr. Powell knew very little about the mother other than what she chose to tell him. Although he said he had reviewed her file, he was unable to answer questions relevant to Alex's case. The juvenile court was entitled to reject his testimony in favor of the inferences raised by contrary evidence.

The mother began her AA program only after services were terminated, about four and one-half months before the hearing. Although she acknowledged that alcohol created problems for her, she concluded the problem was solved. She saw no deficiencies in her parenting abilities prior to Alex's detention. While we are loathe to rely on a mere failure to internalize the teachings of her AA program, here the mother demonstrated a fundamental lack of insight into the problems that led to the dependency.[5] There is substantial evidence to support the juvenile court's conclusion that there had been no legitimate change of circumstances since the termination of reunification services.

Furthermore, the juvenile court's conclusion that returning Alex to his mother would not be in his best interests is indisputably correct. The child has experienced a history of stability with his foster family and has developed a strong bond with them. Despite his attachment to his mother, he was able to clearly express his desire to live with them "forever."

The mother claims even if the court denied her section 388 petition, it should have stopped short of terminating her parental rights because Alex derives some benefit from their relationship. But she has fallen far short of her burden of demonstrating the type of benefit required.

Section 366.26, subdivision (c)(1)(A) allows the court to refuse to terminate parental rights to an adoptable child if it finds a compelling reason for determining that termination would be detrimental to the child because the parent has "maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." These statutory requirements are not met merely by evidence that a child

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[5] Compare this case with the situation in *Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738: "The idea that, despite enduring countless hours of therapy and counseling (much of it predicated on the possibly erroneous assumption that her husband is a child molester), a parent who has faithfully attended required counseling and therapy sessions must still relinquish her child because she has not quite 'internalized' what she has been exposed to has an offensive, Orwellian odor. The failure to 'internalize' general parenting skills is simply too vague to constitute substantial, credible evidence of detriment." (*Id.* at p. 1751, fn. omitted.)

derives some benefit from a relationship with his parent. The relationship must be so vital to the child that the detriment caused by its absence would outweigh the benefits of stability and permanence offered by adoption. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.) There is no evidence of this type of relationship.

DISPOSITION

The order of the juvenile court terminating parental rights is affirmed.

SILLS, P. J.

WE CONCUR:

RYLAARSDAM, J.

BEDSWORTH, J.